

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM LONERGAN.,

Plaintiff,

21 cv 2374 (PKC)

-against-

ORDER

CRISBEL GROUP, INC. and KIEWIT
INFRASTRUCTURE CO.,

Defendants.

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CASTEL, District Judge:

The Court has the duty to examine whether it has subject matter jurisdiction over an action.

This is an action originally brought in Supreme Court of the State of New York, New York County and removed to this Court by defendant Crisbel Group, Inc. (“Crisbel”).

Section 1446(b)(2)(A) of title 28 provides that “When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.” There is no indication that defendant Kiewit Infrastructure, Co, (“Kiewit”) has joined in or consented to removal.

**This defect is waivable if not raised by plaintiff in a motion to remand with-
in 30 days of the filing of the notice of removal. 28 U.S.C. § 1447(c).**

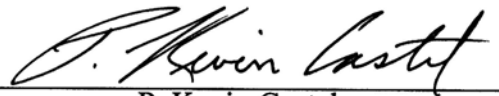
Under the practice and procedure in New York Courts an ad damnum is not included in the complaint. It is customary for a defendant not to remove until the amount of plaintiff’s damage demand is disclosed in a document served in the proceeding.

The complaint describes the occurrence as a “trip and fall” and it is by no means intuitive that the amount in controversy exceeds the jurisdictional threshold of this Court which is an amount in excess of \$75,000 exclusive of interest and costs.

Within 15 days, defendant Crisbel shall submit an affidavit demonstrating that a factual basis for its belief that the amount in controversy exceeds the jurisdictional threshold of this Court. **If the plaintiff wishes to challenge whether the jurisdictional threshold has been exceeded, it shall do so in a motion to remand filed within 30 days of the filing of the notice of removal.**

This Order shall be served by Crisbel electronically and by overnight courier on plaintiff's counsel and Kiewit by March 23, 2021.

SO ORDERED.



P. Kevin Castel
United States District Judge

New York, New York
March 19, 2021